

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

BILLY F. BURNS, #26459-180

Petitioner,

v.

2:07CV111

VANESSA P. ADAMS, Warden,  
FCI Petersburg,

Respondent.

**FINAL ORDER**

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2241. The petition alleges violation of federal rights pertaining to the failure of the Bureau of Prisons to credit petitioner with 256 days spent in state custody to his federal sentence. Petitioner does not, in this proceeding, attack any underlying conviction.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The Magistrate Judge filed his report recommending dismissal of the petition on February 12, 2008. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. The Court received from petitioner on February 26, 2008, objections to the report.

The Court, having reviewed the record and examined the objections filed by the petitioner and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Magistrate Judge's Report and Recommendation. It is, therefore, ORDERED that the petition be DENIED and DISMISSED on the merits and that judgment be entered in respondent's favor.

To the extent that petitioner objects to the Magistrate Judge's findings and conclusions, the objections are without merit. Petitioner was arrested by state authorities on drug charges. While in state custody, he was "loaned" to the federal authorities through the means of a habeas corpus ad prosequendum writ. While in federal custody, he was tried and sentenced and was returned to state custody for further state action.

State authorities had "priority of jurisdiction" when petitioner was turned over to federal authorities, they maintained "priority of jurisdiction" when petitioner was tried and sentenced on federal charges, and they reasserted their jurisdiction when he was returned to state custody. The BOP gave petitioner credit for the days he spent in federal custody, not credited by the state. In all other respects, it was the intention of the federal judge that the sentences run consecutively, not concurrently. The federal sovereign is not bound by the finding of a state sovereign, any more than a state sovereign is bound by a nonconstitutional finding of the federal sovereign. Each maintains their independence. Petitioner was given the credit to which he was entitled.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within sixty days from the date of entry of such judgment. Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall mail a copy of this Final Order to petitioner and to counsel of record for respondent.

/s/ REBECCA BEACH SMITH    
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

February 29, 2008